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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,446	12/03/2003	Barrington Herman	WEYE121341/24873	7090

28624 7590 02/06/2006

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EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/727,446

Applicant(s)

HERMAN, BARRINGTON

Examiner

Jeffrey L. Gellner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 and 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Radwan et al. (New Forests vol. 3; document 21 on Applicant's IDS received 7 May 2004) in view of Saul et al. (document O25 on page 3 of Applicant's 1449 received 7 May 2004).

As to Claims 1 and 13, Radwan et al. disclose a method for promoting growth of shoots ("vigorous new shoots" of top page 23) comprising applying fertilizer solution ("intermittent overhead mist" of 2nd para. of page 24) that comprises less than about 0.01% (w/v) nitrogen (in that mist is water which would contain less than about 0.01% (w/v) nitrogen) from an Alder. Not disclosed is the use of an alder log. Saul et al., however, discloses the use of a log ("cuttings" of Saul et al.) as a source for propagation. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Radwan et al. by using a log as disclosed by Saul et al. so as to have a practical way of propagating cuttings of alder with both shoots and roots so as to increase the developmental speed of improved genotypes (see Saul et al.).

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As to claim 2, Radwan et al. as modified by Saul et al. further disclose the solution not containing any nitrogen (in that the water used for misting plants contains not nitrogen unless contaminated of Radwan et al.).

As to claims 3 and 5, Radwan et al. as modified by Saul et al. further disclose the solution an intermittent mist (from page 24, 2nd para. of Radwan et al.).

As to claim 4, the limitations of Claim 1 are disclosed as described above. Not disclosed is the mist applied continuously. Examiner takes official notice that it is old and notoriously well known in the horticultural art to apply a mist continuously to seedlings. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Radwan et al. by misting continuously depending upon the physiologic needs of the seedlings.

As to claim 6, the limitations of Claim 3 are disclosed as described above. Not disclosed is the mist applied at 65 psi. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Radwan et al. by misting at 65 psi so as to supply the pressure needed to adequately mist the seedlings.

As to claims 10-12, Radwan et al. as modified by Saul et al. further disclose harvesting shoots from the log (top of page 23 of Radwan et al.), planting harvested shoots in a rooting medium (“vermiculite and perlite” of page 24, 2nd para. of Radwan et al.) in the presence of a rooting hormone (see “*The chemical treatments*” starting on page 23 of Radwan et al.), and applying a fertilizer solution (“intermittent overhead mist” of 2nd para. of page 24 of Radwan et al.) that comprises less than about 0.01% (w/v) nitrogen (in that mist is water which would contain less than about 0.01% (w/v) nitrogen), to the planted shoots in an amount effective to promote growth of the shoots (see abstract of Radwan).

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As to claim 14, Radwan et al. as modified by Saul et al. further disclose the Alder log being from a tree 5 to 9 years old ("younger trees (<7 years)" of page 22, last para. of Radwan et al.).

As to claims 15 and 16, the limitations of Claim 1 are disclosed as described above. Not disclosed is the method used with Beech or Birch logs. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Radwan et al. as modified by Saul et al. by substituting Beech or Birch for Alder depending upon the species that is to be improved.

Claims 7-9 are rejected under 35 U.S.C. §103(a) as being unpatentable over Radwan et al. (New Forests vol. 3; document 21 on Applicant's IDS received 7 May 2004) in view of Saul et al. (document O25 on page 3 of Applicant's 1449 received 7 May 2004) in further view of Huss-Danell (Physiol. Plant; document 10 on Applicant's IDS received 7 May 2004).

As to claims 7-9, the limitations of Claim 1 are disclosed as described above. Not disclosed is the fertilizer solution comprising K, P, and Cu. Huss-Danell, however, discloses a rooting fertilizer for alder with K, P, and Cu (page 114, 1st para.). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Radwan et al. as modified by Saul et al. by using the fertilizer solution of Huss-Danell so that the shoots have adequate nutrition to ensure healthy growth.

Response to Arguments

Applicant's arguments filed 23 November 2005 have been fully considered but they are not persuasive. Applicant's arguments are: (1) Radwan et al. discloses application of a fertilizer solution greater than 0.01% nitrogen (w/v) (Remarks at page 4, 1st complete para.); (2) Radwan et al. does not disclose the "overhead mist" as containing fertilizer so the mist is not a fertilizer solution (Remarks at page 5, 1st two lines); and, (3) Saul does not cure the deficiencies of Radwan et al. (Remarks at page 5, last para.).

As to argument (1), the section of Radwan et al. to which Applicant refers, top of page 23, has to do with the fertilizer that trees received. From these trees the logs were obtained. The logs were misted, as disclosed on the top of page 24 of Radwan et al. The mist did not contain fertilizer.

As to argument (2), Examiner considers the mist of Radwan et al. to contain no nitrogen exactly because the reference is silent as to any fertilizer in the mist. Water used in studies such as Radwan et al. are considered to contain no or only trace amounts of nitrogen.

As to argument (3), Radwan et al. discloses the claim language as stated above.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Jeffrey L. Gellner', with a stylized flourish at the end.

Jeffrey L. Gellner
Primary Examiner
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